IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

SECOND APPEAL NO.1411 OF 2005

Mr. Anandrao Narsinh Patil
since deceased through his heirs:
Geeta Anandrao Patil & Ors. ...Appellants.

Vs.

Vishnu Krishna Sawant. ...Respondent.

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Mr. G.S. Godbole for the Petitioner.
Mr.R. P. Joshi for the Respondent.

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**CORAM : DR. D.Y. CHANDRACHUD, J.**

**December 2, 2005.**

**P.C.:**

Admit. By consent of Counsel appearing on behalf of the contesting parties, the appeal is taken up for final disposal.

A suit for eviction was filed by the predecessor-in-title of the Appellant in the Court of the Civil Judge, Junior Division, Vasai in respect of tenanted premises comprising of Room No.10, Geetanand Bhushan Dham, Chandansar, Taluka Vasai, District Thane. The suit was instituted in the Court of the Learned Civil Judge, Junior Division, Vasai. There was an averment in the plaint

that the tenant had not deposited rent after September 1997. Then it was averred that the tenancy of the Respondent was validly terminated by a notice of termination. A decree for eviction was sought. The suit was decreed by the Civil Judge, Junior Division, Vasai on 27th September 1999. The Respondent carried the matter in appeal and on 29th September 2003, the appeal was allowed. Before the First Appellate Court it was conceded on behalf of the Respondent herein, that the provisions of the Bombay Rent Act were not applicable to village Chandansar where the suit premises are situated. It was asserted that despite this, a suit was filed on the ground that there was a default in the payment of rent and invoking a ground for eviction under Section 12 of the Bombay Rent Act and the suit, it was submitted, should be dismissed. This found acceptance of the First Appellate Court which reversed the decree for eviction.

In this Second Appeal, the following substantial question of law arises: On the admitted position that the protection of the Rent Act is not available in respect of village Chandansar wherein the suit premises are situated and in view of the finding of the Learned Trial Judge that the notice of termination of tenancy dated

25th March 1998 was duly served on the Respondent on 28th March 1998; was the Additional District Judge, justified in setting aside the decree for eviction?

A perusal of the plaint in the suit instituted before the Learned Civil Judge, Junior Division, would demonstrate ex-facie that the material averment on the basis of which a decree was sought, was that a notice of termination of tenancy was issued and that the tenancy had, therefore, been lawfully brought to an end. Undoubtedly, there was also an averment in support of the plea that the tenant had stopped payment of rent from September 1997. The provisions of the Bombay Rent Act, it is undisputed, are not applicable to the area wherein the suit premises are situated. Consequently, under Section 106 of the Transfer of Property Act, 1882, the only requirement for a lawful termination of tenancy was the issuance of a notice of 15 days. That has admittedly been done. The Civil Judge, Junior Division, Vasai had the jurisdiction to entertain the suit. In these circumstances, there is absolutely no defence to the suit for eviction. The First Appellate Court having noted that the protection of the Rent Act was not available, was manifestly in error in reversing the decree of eviction. The Rent Act interposes a protection from eviction as a result of which the

landlord is not entitled to a decree of eviction unless a ground for eviction under the Rent Act has been established. In a situation where the protection of the Rent Act is not available, the landlord has to fulfill the requirements set out in the Transfer of Property Act, 1882. Once there has been a valid termination of tenancy, a decree for eviction will have to follow.

In the circumstances, the judgment and order of the Additional District Judge, dated 29th September 2003 shall stand quashed and set aside and the suit for eviction shall accordingly stand decreed. However, in order to enable the Respondent to vacate the premises, there shall be a direction to the effect that the decree shall not be executed until 30th April 2006, subject to the Respondent filing the usual undertaking within a period of one month from today.

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